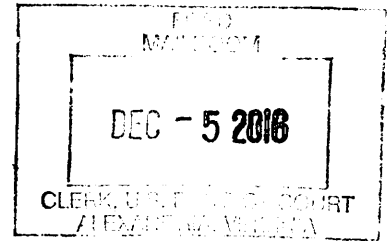


**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**



RANJITH KEERIKKATTIL

Plaintiff,

v.

STACY SAWIN, *et al.*,

Defendants.

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Case No.: 1:16-cv-827-CMH-MSN

Hon. Claude M. Hilton

PLAINTIFF'S MOTION TO DISMISS
DEFENDANTS' MOTION TO DISMISS AS MOOT

On November 7, 2016, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Deloitte LLP, Deloitte Consulting LLP, Deloitte Services LP, Alicia Carberry, Derick Masengale, Mike Preston, Pamela Seats and Eric Janson filed their Motion to Dismiss (ECF No. 10). Defendants Stacy Sawin and Andrew Sawin also filed their Motion to Dismiss, pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure (ECF No. 13) on the same day.

Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to file an amended complaint "shall be freely given when justice so requires." This "liberal rule" reinforces the "federal policy in favor of resolving cases on their merits instead of disposing them on technicalities." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006); *see also Conley v. Gibson*, 355 U.S. 41, 48 (1957) ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."). As noted by the United

States Court of Appeals for the Fourth Circuit, Rule 15(a) ensures that the “plaintiff [is] given every opportunity to cure a formal defect in his pleading.” *Ostrzenski v. Seigel*, 177 F.3d 245, 252-53 (4th Cir. 1999) (quoting 5A Charles Allen Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (2d ed. 1990)).

Within 21 days of the filing of a defendant’s motion to dismiss, an amended complaint may be filed *as a matter of right*, requires no motion, and requires neither consent by the opposing party nor leave of court. Fed. R. Civ. P. 15(a)(1)(B) (emphasis added). ““The plaintiff’s right to amend once [within this timeframe] is *absolute*.”” *Scinto v. Stansberry*, 507 F. App’x 311, 312 (4th Cir. 2013) (quoting *Galustian v. Peter*, 591 F.3d 724, 730 (4th Cir. 2010); emphasis added).

Defendants filed their Rule 12(b) motion on November 7, 2016. Plaintiff filed his First Amended Complaint within 21 days of service of Defendants’ Rule 12(b) motion. Thus, this Court should accept Plaintiff’s First Amended Complaint, in its entirety, “as a matter of course” without further analysis. In addition, Plaintiff’s First Amended Complaint renders Defendants’ Motion to Dismiss MOOT and hence should be DENIED. Therefore, the Court should enter an order dismissing Defendants’ Motion to Dismiss as MOOT.

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 83.1M(2)

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of this document.



Ranjith Keerikkattil

Executed on: November 28, 2016

Dated: November 28, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November 2016, a copy of Plaintiff's Motion to Dismiss Defendants' Motion to Dismiss as Moot was served by First Class Mail Postage Prepaid to:

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A handwritten signature in black ink, appearing to be 'Ranjith Keerikkattil', written over a horizontal line.

Ranjith Keerikkattil